IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 9.10.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE M.THANIKACHALAM

Criminal Appeal No.1381 of 2004

Govindan
Appellant (Accused No.1)

vs.

State, rep. by
Inspector of Police,
Thimiri Police Station,
(Crime No.244 of 1999) Respondent (Complainant)

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment of the learned Additional District and Sessions Judge (FTC II), Ranipet, Vellore District dated 2.11.2004 in Sessions Case No.138 of 2000.

For Appellant : Mr.Gopinath, Sr. Counsel for
M/s.R.John Sathyam & S.Suresh

For Respondent : Mr.N.R.Elango,
Additional Public Prosecutor

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JUDGMENT

(Delivered by P.D.DINAKARAN,J.)

The appellant, first accused in Sessions Case No.138 of 2000 on the file of learned Additional Sessions Judge (FTC II), Ranipet, questioning the correctness of judgment of conviction and sentence dated 2.11.2004 rendered in the above said sessions case, has preferred this appeal.

2. The appellant/1st accused and other three accused were charged under sections 364, 302 and 302 read with 34 IPC alleging that when the deceased Kumar did not return the money borrowed from the 1st accused, with the intention to cause his death, all the accused took the deceased in a Moped (TVS 50) on 23.8.1999 at 7.30 a.m. to a place called, Paradesimalai, attacked him with stones and caused his instantaneous death.

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3. The fact situation of the case leading to the present proceeding may be shortly stated thus:

3.1. P.W.1 Govindasamy Gounder is the father, P.W.8 Kalyani is the mother, P.W.9 Mayakrishnan is the brother and P.W.10 Jayalakshmi is the sister of the deceased. P.W.3 Anbu is nephew of P.W.1. P.W.4 Chakravarthi and P.W.5 Poongavanam are brothers of P.W.1.

3.2. One year prior to the date of occurrence, the deceased Kumar borrowed a sum of Rs.7,500/- from the 1st accused Govindan. About one month prior to the occurrence, the 1st accused demanded the deceased to return the money borrowed. The deceased replied that he would return the money very soon. But, the 1st accused beat the deceased. At that time, P.W.8 mother of the deceased, P.W.9, brother of the deceased and P.W.10, sister of the deceased, who had come for delivery of the child, were present. P.W.8 took the deceased to the hospital for treatment. P.W.20 Dr.Elangovan treated the deceased for the injuries sustained. In respect of the said incident, no police complaint was given.

3.3. On the date of occurrence, when P.W.1, along with the deceased Kumar, P.W.3 Anbu, P.W.5 Poongavanam and one Govindasamy was standing at Naicken Thope bus stand waiting for a bus to go to Kannamangalam, all the accused came on motor cycles and asked the deceased Kumar to return the money borrowed. The deceased Kumar replied that on receipt of money from one person at Varakur, he would return the money due to the 1st accused. Then, the 1st accused beat the deceased and all the accused took the deceased on M.O.7 motor cycle. Then, P.W.1, P.W.3 and P.W.5 boarded a bus and reached Varakur. At that time, the 1st accused came running from Paradesimalai foothill and informed P.W.1 that he killed the deceased and then, left the place towards Kavanur village. P.Ws.1, 3 and 5 went to Paradesimalai foothill and saw the deceased lying dead. They saw the blood oozing from the left eye and ear. P.Ws.9 and 10 also saw the deceased lying dead. P.W.1 gave Ex.P-1 complaint at about 1.00 p.m. to the Inspector of Police, P.W.23.

3.4. P.W.23, on receipt of Ex.P-1 complaint, registered a case in Crime No.244/99 of Thimiri Police Station under Sections 302 and 109 I.P.C. He visited the scene of occurrence and prepared Ex.P-2 observation mahazar in the presence of P.W.6. He drew Ex.P-18 rough sketch. He conducted inquest and prepared Ex.P-17 inquest report. At the instance of P.W.23, P.W.18 took photographs of the dead body. P.W.23 sent the dead body for postmortem through P.W.22, Head Constable.

3.5. P.W.24 House Surgeon conducted the postmortem on the dead body of the deceased Kumar on 23.8.1999 at 11.00 a.m. and found the following external injuries:

1. Punctured wound 2 cm. X 1/2cm. X ½ cm. over the right side face in front of the right ear.

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2. Contusion over the right side face 3 cm x 2 cm x 2 cm blackish in colour. Bleeding from the ear.

3. Punctured wound over the right side parietal region behind the right ear 2 cm. x ½ x /4cm.

4. Laceration over the left eyebrow. Blood oozing, decomposed fluid oozing from the ear. Skin peeled off.

5. Congestion over the left side parietal bone.

6. Punctured wound over the left side parietal bone 3 cm x 1 cm x ½ cm.

On receipt of chemical analyst's report, P.W.24 was of the opinion that the deceased would appear to have died of shock and haemorrhage due to damage to vital organs and multiple injuries and fracture.

3.6. On the basis of information, P.W.23 arrested the 1st accused on 25.8.1999 at 9.15 a.m. The 1st accused gave a confession statement, Ex.P-19 on the basis of which P.W.23 seized M.O.6 stones and M.O.7 moped (TVS-50) in the presence of P.W.6. P.W.23 also arrested other accused on 5.9.1999 and recorded their confession statements. He recovered the dresses worn by the accused and also other material objects and forwarded the same to the Magistrate's Court to subject them for chemical analysis, and obtained the reports, Exs.P25 and 26. He got the report as to the ownership of motor cycle M.O.7 from the Motor Vehicles Inspector. P.W.23 examined the witnesses and recorded their statements. After completing the investigation, P.W.23 laid the charge sheet against the accused.

4.1. Since the accused denied the charges, they were tried in S.C.No.138 of 2000 on the file of the learned Additional Sessions Judge (FTC No.II), Ranipet.

4.2. Before the Sessions Court, on behalf of the prosecution, P.Ws.1 to 24 were examined and Exs.P1 to P35 and material objects M.Os.1 to 15 were marked. Though P.Ws.2, 4, 11, 12 and 21 were examined to speak about the motive and occurrence, P.Ws.6 and 7 were examined for recovery of material objects, P.W.13 was examined to speak about the confession statements given by accused 2 to 4 and P.Ws.14, 15, 16 and 17 were examined to speak about the stay of accused 2 to 4 in their house after the occurrence, they turned hostile.

5. When the accused were questioned under Section 313 Cr.P.C. in respect of the incriminating circumstances found against them, they denied the same. The accused neither examined any witness, nor marked any document on their side.

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6. On consideration of the oral and documentary evidence available on record, the learned Sessions Judge convicted the 1st accused under sections 364 and 302 IPC and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.3,000/- under section 364 IPC and to undergo life imprisonment and to pay a fine of Rs.5,000/- under section 302 IPC and he also imposed default sentence. However, learned Sessions Judge found accused 2 to 4 not guilty under sections 364 and 302 read with 34 IPC and acquitted them. Questioning the above conviction and sentence, the 1st accused has come forward with this appeal.

7. Pointing to the discrepancies found in the evidence of prosecution witnesses, Mr.Gopinath, learned senior counsel appearing for the appellant/1st accused mainly submits that the trial Court ought not to have convicted the appellant when the prosecution has not proved its case beyond the reasonable doubt. According to him, it is a case of circumstantial evidence and the prosecution has failed to prove the chain of circumstances in a cogent manner so as to fix the guilt of the appellant. His further submission is that when other accused were acquitted, the same benefit ought to have been extended to the appellant.

8. On the other hand, the learned Additional Public Prosecutor contends that it is evident from P.Ws.1, 3, 5 and 8 that it is the 1st accused who quarrelled with the deceased demanding the money due and then, took the deceased on a motor cycle and also made a declaration to the witnesses that he killed the deceased, and hence, the trial Court has correctly convicted and sentenced the 1st accused and there is no need to interfere with the judgment of the trial court.

9. We have given our careful consideration to the submissions made by the learned counsel on either side and also perused the records.

10. Before dealing with the submissions of the learned senior counsel for the appellant, we feel it appropriate to have an overview of the factual position of the case.

10.1. It is not in dispute that the deceased Kumar borrowed a sum of Rs.7,500/- from the 1st accused Govindan about one year prior to the occurrence and the deceased was evading repayment and, the 1st accused used to quarrel with the deceased demanding the money due. About one month prior to the occurrence, the 1st accused picked up quarrel with the deceased demanding return of money and in that, it is the prosecution case, the deceased was attacked by the accused, but, admittedly, there was no complaint lodged qua the said incident.

10.2. On the date of occurrence, it is the case of prosecution that when the deceased along with P.W.1, P.W.3 and P.W.5 was standing at Naicken Thope bus stand to go to Kannamangalam, all the four accused

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came on motor cycles and the 1st accused demanded the return of money due for which the deceased Kumar sought time, but the 1st accused, by beating the deceased Kumar took him on the motorcycle M.O.7. Then, P.W.1 and others went to Varakur by bus where the 1st accused came running from Paradesimalai and informed P.W.1 that he killed the deceased and immediately, P.W.1 and others went to Paradesimalai and saw the deceased lying dead.

10.3. The above version has been spoken to by P.W.1 and corroborated by P.Ws.3 and 5. P.W.8 mother of the deceased, P.W.9 brother of the deceased and P.W.10 sister of the deceased also saw the deceased lying dead. P.W.24 doctor who conducted autopsy found seven injuries on the body of the deceased. He found punctured wounds on the right face and right and left parietal, besides contusion and laceration. P.W.24 doctor was of the opinion that the deceased would appear to have died of shock and haemorrhage due to the damage to vital organs and multiple injuries and fracture. From the medical evidence of P.W.24, it is clear that the deceased Kumar was done to death and it is nothing but a homicidal violence. The injuries found on the body of the deceased as evident from P.W.24 as well as Ex.P-33, postmortem certificate, unmistakably go to show that the death was by homicidal violence.

10.4. Regarding motive, it is the case of prosecution that the deceased borrowed a sum of Rs.7,500/- from the 1st accused and since the deceased was delaying the repayment, quarrel started between them. It is the evidence of P.Ws.1, 3, 5, 8, 9 and 10 that the deceased owed some amount to the 1st accused and demanding the sum, the 1st accused picked up quarrel with the deceased. It is found in evidence that one month prior to the occurrence the 1st accused picked up a quarrel demanding money due in which the deceased sustained injuries which were treated by P.W.20 doctor. It is not the case of defence that there was no money dealing between the 1st accused and the deceased. In cross-examination, the above witnesses have also accepted that they had knowledge of money dealing between the both. The prosecution has therefore proved that there was money dealing between the 1st accused and the deceased and for that, there were quarrels between them.

10.5. We may now turn to the question, whether the accused are the persons who caused the injuries on the deceased. The trial Court disbelieved the case of prosecution in so far as accused 2 to 4 are concerned and acquitted them. The trial Court, however, convicted and sentenced the 1st accused for the offences with which he was charged, based on the evidence of P.Ws.1, 3 and 5, who are said to have accompanied the deceased at the time of occurrence. P.Ws.1, 3 and 5 in their evidence have stated that when they were standing at Naicken Thope bus stand along with the deceased for boarding bus to go to Kannamangalam, the 1st accused along with other accused came and demanded money for which the deceased replied that he was expecting money from a

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person at Varakur and on receipt of money, he would return the same to the 1st accused, however, the 1st accused beat the deceased and took him on motorcycle. It is their further evidence that they also followed the 1st accused by boarding a bus and when they alighted at Varakur, the 1st accused came running towards them and informed that he killed the deceased and then, they visited the scene at Paradesimalai foothill and saw the deceased lying dead. Believing the evidence of P.Ws.1, 3 and 5, the trial Court convicted the 1st accused on the ground that the 1st accused was last seen in the company of the deceased.

11.1. The main plank of argument, as already pointed out, of the learned senior counsel for the appellant/1st accused is that it is a case of circumstantial evidence and the prosecution has failed to prove the chain of circumstances in a cogent manner so as to fix the guilt of the 1st accused. According to him, there are discrepancies in the evidence of prosecution witnesses and hence, it cannot be stated that the chain of circumstances is consistent.

11.2. It is true that there is no direct eye-witness to speak about the occurrence proving the crime committed by the 1st accused. The prosecution case wholly rests on the circumstantial evidence. Circumstantial evidence is something from which facts in issue are to be inferred. It is well settled that when a case rests on circumstantial evidence, such evidence must satisfy three tests,

> (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
>
> (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; and
>
> (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.

In the case of circumstantial evidence, the incriminating circumstances proved against the appellant must form a complete chain to establish the guilt of the accused.

11.3. In the present case, as rightly pointed out by the learned senior counsel for the appellant/1st accused, there are discrepancies in the evidence of prosecution witnesses. The trial Court mainly relied on the evidence of P.Ws.1, 3 and 5 to come to the conclusion that it is the 1st accused who committed the crime. The prosecution version is that P.W.1 gave Ex.P-1 complaint to the police. P.W.1 in his chief examination has stated that he drafted a complaint at 11.30 a.m. and handed over the same to the Inspector of Police at 1.00 p.m. whereas his cross-examination goes to show that Inspector of Police wrote the complaint and then, he (P.W.1) signed the same. P.W.1 in his cross examination has also stated that Varakur village headman had already given a report to the police and on that basis, the police visited the scene. He has further stated that after he got down from the bus, he

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made enquiry with the villagers who informed him that a report had already been given to the police.

11.4. P.W.2, who is said to have been present along with P.W.1, in his cross examination has stated that after seeing the dead body at the place of occurrence, P.W.1 left the place to give complaint and later, when the Inspector of Police visited the scene, P.W.1 came along with him. P.W.5, the other witness who is said to have accompanied P.W.1, in his cross examination has stated that he does not know at whose instance, the police visited the scene. Therefore, there are discrepancies in the evidence of P.Ws.1, 3 and 5 as to who reported the matter to the police at first, whether it is P.W.1 or village headman, which raises a doubt as to whether Ex.P-1 complaint came into being as described by the prosecution.

11.5. The other interesting discrepancy is, P.W.8, mother of the deceased, who in her cross-examination has stated that being informed by her mother Valliammal that her son (deceased) was being beaten, she first went to the scene of occurrence and P.W.1, P.W.3, P.W.5 and others followed her. It is her further claim that she informed the police that herself, P.W.1, P.W.3 and P.W.5 all together went to the scene of occurrence.

11.6. Further, P.W.9, brother of the deceased, in his cross-examination, has stated that he only informed his father P.W.1 about the death of the deceased and thereafter, P.W.1, P.W.8 and others proceeded to the scene. This being the evidence of P.Ws.8 and 9, the prosecution case mainly resting on the evidence of P.W.1 who has stated that himself, P.W.3 and P.W.5 first visited the scene and saw the deceased lying dead cannot be stated to be proved beyond the reasonable doubt.

11.7. The evidence of P.W.10, sister of the deceased, in cross examination to the effect that a boy hailing from her village saw the deceased being beaten by the accused, but he refused to give evidence and that she also informed the same to the police is yet another circumstance which would affect the prosecution case. It is true that it is the prerogative of the prosecution to examine or not to examine any witness in support of its case, but, when there is no direct eye-witness and the case on hand mainly rests on circumstantial evidence, the prosecution has not even explained the reasons as to why the said person was not examined, which can be considered to be fatal to the prosecution case.

11.8. In case of circumstantial evidence like the present one, not only culpability or mens rea of the accused should be prima facie established, but the court must also consider the question as to whether the circumstantial evidence is such whereby all the links in the chain are complete. [vide: Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra,(2005) 5 SCC 294]. As already observed, the entire case is

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based on circumstantial evidence and all links in the chain must be proved. The discrepancies in the evidence of prosecution witnesses mentioned above only lead to a conclusion that the vital link in the chain viz., possibility of the 1st accused committing the crime has not been proved by the prosecution. Of course, it would have been better if the prosecution would have completed the link in the chain by examining the village boy who is said to have witnessed the deceased being beaten up by the accused, but the prosecution failed to explain the reason as to why he was not examined.

12. The next contention of learned senior counsel for the appellant/1st accused that when other accused had been given the benefit of doubt and they were acquitted, the same benefit should also be extended to the appellant cannot be lightly brushed aside as it is settled that eye-witnesses having been disbelieved partly, resulting in acquittal of the co-accused, it would not be safe to believe them qua the appellant and the appellant is entitled to the benefit of doubt and acquittal (vide: Lakkappa Ningappa Ittappannavar v. State of Karnataka (1993 Supp (2) SCC 755)]. Applying the ratio to the facts of the case, we are of the view that the 1st accused is also entitled to the benefit of doubt which has been extended to other accused, particularly when there are discrepancies in the evidence of prosecution witnesses.

13. That apart, Ex.P-1 was registered at 1.00 p.m. on 23.8.1999. However, it is seen from the cross-examination of P.W.23 that the first information report reached the court, which is about 15 to 20 km. away from the Police Station, at 6.30 p.m. It is true that the prosecution has failed to explain the delay by examining the concerned Police Constable through whom the FIR was sent to the Court, but the learned senior counsel for the appellant is not emphatic on this point, though a ground of delay in lodging/sending F.I.R. to court has been raised.

14. Now, considering the facts of the present case in the background of our observations made in the preceding paragraphs, we are of the view that the prosecution has failed to establish the guilt of the 1st accused beyond the reasonable doubt. The discrepancies in the evidence of witnesses, as pointed out by the learned senior counsel for the appellant would raise a doubt in the prosecution story. Though the deceased was done to death in a heinous manner, there is no evidence to connect the 1st accused with the crime and the discrepancies found in the evidence of prosecution witnesses make the links in the chain of circumstances broken. The prosecution has utterly failed to link up the chain and as a matter of fact, the snap in the chain is not very far to seek, thus warranting an order of acquittal of the 1st accused, particularly when the benefit of doubt has been given to other accused.

Having considered the matter from all perspectives, we do feel it expedient to record that the trial Court has failed to take into

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consideration the above discrepancies while convicting the 1st accused and it is not safe to convict the 1st accused for the offences with which he is charged. Accordingly, the appeal is allowed and the conviction and sentence of the 1st accused are set aside and he is acquitted of the charges. The appellant, who is in custody, is directed to be released forthwith if not required in connection with other cases. The fine amount, if paid, shall be refunded to him.

na.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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1. THE ADDITIONAL DISTRICT AND SESSIONS JUDGE (FTC II)
RANIPET (WITH RECORDS)

2. THE PRINCIPAL SESSIONS JUDGE
VELLORE

3. INSPECTOR OF POLICE,
THIMIRI POLICE STATION.

4. THE SUPERINTENDENT
CENTRAL PRISON
VELLORE

5. THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS

6. THE INSPECTOR GENERAL OF
POLICE, MADRAS - 4.

7. THE DISTRICT COLLECTOR
VELLORE

ONE CC TO MR.R. JOHN SATHYAN, ADVOCATES SR 46945

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